

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 33747

LEWIS W. POE,)	2008 Unpublished Opinion No. 433
)	
Plaintiff-Appellant,)	Filed: April 22, 2008
)	
v.)	Stephen W. Kenyon, Clerk
)	
LITTLE BLACKTAIL RANCH PARK)	THIS IS AN UNPUBLISHED
HOME OWNERS' ASSOCIATION, an)	OPINION AND SHALL NOT
Idaho corporation, J. DOE #1-8, in their)	BE CITED AS AUTHORITY
individual capacity,)	
)	
Defendants-Respondents.)	
)	

Appeal from the District Court of the First Judicial District, State of Idaho, Bonner County. Hon. Steven C. Verby, District Judge.

Judgment in favor of homeowners' association, affirmed.

Lewis W. Poe, Honolulu, Hawaii, pro se appellant.

Gary A. Finney, of Finney, Finney & Finney, P.A., Sandpoint, for respondents.

PERRY, Judge

Lewis W. Poe appeals from the district court's judgment entered after a bench trial in favor of Little Blacktail Ranch Park Home Owners' Association, Inc. For the reasons set forth below, we affirm.

I.

FACTS AND PROCEDURE

Poe is the co-owner, with his son and daughter-in-law, of real property located in Little Blacktail Ranch Park in Bonner County. Through this ownership, Poe is a member of in Little Blacktail Ranch Park Home Owners' Association. The homeowners' association is a nonprofit and nonreligious corporation that is managed by a board of trustees. The current dispute between Poe and the homeowners' association arose from the board's decision in October 2003, to raise the annual dues from \$103 to \$113 and its subsequent decision in July 2004 to raise the annual dues to \$124. In his initial complaint, Poe raised four contentions regarding the increase

in annual dues and financial records Poe requested from the board. Shortly after Poe filed his complaint, the president of the board wrote a letter to the members of the homeowners' association. The president's letter suggested that individuals could "contribute" \$21 into Poe's homeowner's account in order to bring his account up to date and avoid costly litigation. In response, Poe wrote a letter addressed to one member of the board and to the property management company that held the funds of the homeowners' association, instructing the property management company not to adjust Poe's homeowner's account with contributions from anyone other than himself or his co-owners. Subsequently, the president of the Board, another member of the board, and one member of the homeowners' association who was not on the board contributed a total of \$21, and the treasurer of the board instructed the property management company to credit the money to Poe's account. Poe filed a second action in response to the credit of \$21 to his account. In his second complaint, Poe sought a declaratory judgment that, by crediting \$21 into Poe's account, the board violated I.C. § 30-3-37, and the homeowners' association's bylaws, covenants and restrictions. Poe also sought damages due to infliction of emotional distress and requested costs.

The district court held consecutive bench trials on Poe's two actions. After testimony and evidence was presented in both trials, the district court first ruled in favor of the homeowners' association with regard to the claims raised in Poe's first complaint. This Court affirmed the district court's judgment entered on the claims raised in the first trial. *See Poe v. Little Blacktail Ranch Park Homeowners' Association, Inc.*, Docket No. 33726 (Ct. App. Apr. 14, 2008). The district court also ruled in favor of the homeowners' association with regard to the claims raised in Poe's second complaint. Specifically, the district court ruled that the board did not violate the bylaws, covenants and restrictions, or I.C. § 30-3-37, because the board did not contribute the \$21 to Poe's account. Rather, the district court found that three individuals contributed the money. The district court also ruled that Poe had not cited any basis in law entitling him to relief on an argument he presented at trial based on Article 1, Section 1 of the Idaho Constitution, and that the doctrine of *de minimis non curat lex*¹ precluded any relief for the payment of \$21 on Poe's account. The district court ruled that Poe's claim of emotional distress

¹ *De minimis non curat lex* is defined as, "The law does not care for, or take notice of, very small or trifling matters. The law does not concern itself about trifles." BLACK'S LAW DICTIONARY 431 (6th ed. 1990).

failed because Poe did not present any evidence as to damages in support of that claim. Finally, the district court ruled that the homeowners' association was the prevailing party and was entitled to costs. Poe now appeals from the district court's judgment entered on the claims raised in his second complaint.

II.

STANDARD OF REVIEW

On appeal, this Court will not set aside findings of fact unless they are clearly erroneous. I.R.C.P. 52(a). A finding of fact is not clearly erroneous if the district court's findings are supported by substantial and competent evidence, even if that evidence is conflicting. *D & M Country Estates Homeowners Ass'n v. Romriell*, 138 Idaho 160, 164, 59 P.3d 965, 969 (2002). We give due regard to the district court's special opportunity to judge the credibility of the witnesses who personally appear before the court. *Id.* In contrast to the appellate review of findings of fact, this Court exercises free review over the district court's conclusions of law. *Id.* Therefore, this Court may substitute its view for that of the district court on a legal issue. *Id.*

III.

ANALYSIS

On appeal, Poe asserts that the district court erred in ruling that the board took no action and, therefore, did not violate Poe's rights under Idaho Nonprofit Corporation Act, I.C. § 30-3-37. Idaho Code Section 30-3-37 provides:

All members shall have the same rights and obligations with respect to voting, dissolution, redemption and transfer, unless the articles or bylaws establish classes of membership with different rights or obligations or divide voting rights by voting districts. All members shall have the same rights and obligations with respect to any other matters, except as set forth in or authorized by the articles or bylaws.

Poe asserts that the homeowners' association--acting through the board--deprived him of the same rights and obligations as other members by crediting \$21 to his account without also crediting that amount to all members' accounts. Poe asserts that three board members--the president, the treasurer, and one other board member--took actions to pay \$21 on his account.² The record indicates that the president of the board and one other member of the board were two

² The record indicates that the board consisted of five members.

of the three individuals who contributed their own money to deposit \$21 in Poe's account, and the treasurer of the board directed the property management company to deposit the \$21 into Poe's account.

The district court's factual finding, however, was supported by testimony presented at trial. The treasurer of the board testified in the second trial that the Board did not use funds from the homeowners' association to deposit \$21 into Poe's account and, rather, that three individual members of the homeowners' association contributed the money. Indeed, the treasurer testified that the idea of raising money to pay Poe the \$21 to resolve the dispute was not discussed at official meetings and that the non-board member who contributed to Poe's account did so voluntarily after the end of a meeting where Poe's lawsuit was a topic. The treasurer testified that the money was a gift to Poe from his neighbors motivated by their desire to resolve the legal dispute. The treasurer also testified that the individuals who contributed the money had to funnel it through the treasurer to pay it for Poe's account because the property management company did not want to have direct contact with individual members of the homeowners' association. The district court implicitly relied on this testimony when it found that the board did not take any action itself. The district court's finding was not clearly erroneous.

Poe relies on testimony of the president of the board at a prior proceeding initiated by the homeowners' association against Poe to collect unpaid dues. Poe asserts that the president testified that the "Board saw to it that Mr. Poe's account was corrected" for the amount that he alleged was illegal. The only evidence in the record of this testimony is a written response to Poe's interrogatories from the homeowners' association, which the district court admitted as an exhibit. This response to a discovery request does not say that there was a formal board vote and does not contradict the testimony of the treasurer of the board that individual members informally decided to contribute the money. Poe also relies on the letter written by the president suggesting that individuals could contribute the \$21 to Poe's account to avoid costly litigation, but the letter did not indicate that the board contributed funds from the homeowners' association. Poe also relies on his letter to the property management company to assert that the board required the credit of \$21 to his account despite Poe's instructions not to allow such credit. The treasurer testified, however, that she had no knowledge of this letter at the time that she directed the property management company to apply the \$21 to Poe's account. Poe's letter does not demonstrate that the board instructed the property management company to ignore his request.

Further, even if the board did so instruct, we fail to see how the board's allowing individuals to contribute their personal funds to pay Poe's disputed dues in an effort to avoid further litigation could be deemed a violation of I.C. § 30-3-37 on the part of the homeowners' association. The district court properly found that Poe did not demonstrate that the board engaged in such conduct.³

Poe has either provided insufficient argument or waived the remaining claims that he raised below. Poe has provided no argument or authority in support of his claim of infliction of emotional distress, and he has therefore waived that issue on appeal. *See Powell v. Sellers*, 130 Idaho 122, 128, 937 P.2d 434, 440 (Ct. App. 1997). Likewise, although Poe appears to assert he was entitled to relief under Article 1, Section 1 of the Idaho Constitution, he has presented us with very little argument addressing this basis for relief on appeal. The only authority Poe cites is Article 1, Section 1 of the Idaho Constitution. We conclude that Poe has not demonstrated that the district court erred in failing to grant relief for a violation of Article 1, Section 1 of the Idaho Constitution. Poe also asserts in his reply brief that the district court erred in ruling that the board did not violate the homeowners' association's bylaws, covenants and restrictions by taking actions to have \$21 applied to his account. Poe's opening brief, however, did not state this argument as an issue on appeal and provided no argument or authority supporting this argument. We therefore do not address this issue because issues raised for the first time in a reply brief will ordinarily not be addressed by an appellate court. *See Myers v. Workmen's Auto Ins. Co.*, 140 Idaho 495, 508, 95 P.3d 977, 990 (2004). *See also* I.A.R. 35. To the extent that Poe asserts that the homeowners' association violated its bylaws, and its covenants and restrictions by entering into an oral contract with the property management company, Poe did not include this allegation in his complaint or raise it in the district court. We therefore decline to address this argument because issues not raised below may not be considered for the first time on appeal. *See Sanchez v. Arave*, 120 Idaho 321, 322, 815 P.2d 1061, 1062 (1991).

We need not address the district court's additional ruling regarding the doctrine of *de minimis non curat lex* because we have already held that the district court properly ruled in favor

³ Although Poe also named several "John Does" in their individual capacity as parties in his complaint, he does not appear to have ever identified or served any parties other than the homeowners' association. We therefore need not address the merits of Poe's claims as to any unnamed individuals.

of the homeowners' association on the only claim that Poe has adequately raised on appeal—his claim of a violation of I.C. § 30-3-37. Because Poe has not demonstrated that the district court erred in ruling in favor of the homeowners' association, his argument that the district court erred in ruling that the homeowners' association was a prevailing party also fails.

Finally, we address the homeowners' association's request for attorney fees on appeal pursuant to Idaho Appellate Rule 41 and I.C. § 12-121. An award of attorney fees may be granted under I.C. § 12-121 and I.A.R. 41 to the prevailing party and such an award is appropriate when the court is left with the abiding belief that the appeal has been brought or defended frivolously, unreasonably, or without foundation. *Rendon v. Paskett*, 126 Idaho 944, 945, 894 P.2d 775, 776 (Ct. App. 1995). An appeal should do more than invite the appellate court to second-guess the trial court on conflicting evidence. *Zanotti v. Cook*, 129 Idaho 151, 155, 922 P.2d 1077, 1081 (Ct. App. 1996). Poe's present appeal turns on his assertion that the trial court erroneously found that the Board did not take any action to credit the \$21 into his account. The district court's finding was supported by substantial evidence. We therefore conclude that the homeowners' association is entitled to attorney fees incurred in defending against this appeal. As the prevailing party, the homeowners' association is also awarded costs on appeal as a matter of course. *See* I.A.R. 40(a).

III.

CONCLUSION

We hold that, even if the board's alleged conduct would constitute a violation of I.C. § 30-3-37 on the part of the homeowners' association, the district court properly ruled that Poe did not demonstrate that the board engaged in such conduct. Poe has either provided insufficient argument or waived the remaining claims that he raised below. We do not address the district court's additional ruling regarding the doctrine of *de minimis non curat lex*. The district court did not err in ruling that the homeowners' association was the prevailing party. We therefore affirm the district court's judgment in favor of homeowners' association. The homeowners' association is awarded costs and attorney fees on appeal.

Chief Judge GUTIERREZ and Judge LANSING, **CONCUR.**